IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 15 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

FARDAHMED ABDULSAMAD

Appearance:

MR AKIL QURESHI FOR MR MANISH R BHATT for Applicant.

MR RK PATEL FOR MR KC PATEL for Respondent.

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 04/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Income Tax Appellate Tribunal, Ahmedabad Bench "C" has referred the following two questions for the opinion of this Court under section 256(1) of the Income Tax Act,1961 (hereinafter referred to as 'the Act'), at the instance of the revenue :

(1) "Whether, the Appellate Tribunal is right in law and on facts in cancelling the order made by the Commissioner of Income-tax under section 263 of the I.T.Act ?"

(2) "Whether, the Appellate Tribunal is right in law and on facts in holding that the income of the trust in which the assessee was a trustee, is to be taxed in the hands of the trust on a substantive basis and to be excluded from the income of the assessee ?"

2 We have heard Mr.Akil Qureshi for the revenue and Mr.R.K.Patel for the respondent-assessee.

3 It is common ground between the parties in case of this very assessee in Income Tax Reference No. 202 of 1986 decided on 13/8/2001 in which we have declined to answer the question raised in that reference. That in the present reference the Tribunal has relied upon its own order in assessee's own case for earlier years. It was therefore urged by both the sides that we should follow our decision in assessee's own case rendered in Income Tax Reference No.202 of 1986 and decline to answer the question raised.

4 We, therefore, decline to answer the question referred in the present reference following our decision in assessee's own case in Income Tax Reference No.202 of 1986.

5 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(M.S.Shah,J) (D.A.Mehta,J)

m.m.bhatt